

Supreme Court U.S.
FILED

No. 05-987 DEC 2 2005

OFFICE OF THE CLERK
IN THE

SUPREME COURT
OF THE UNITED STATES

October Term, 2005

WALTER J. LAWRENCE,
Petitioner,

v.

CAROL A. ANTONUCCI,
RICHARD J. ROTELLA, and
RONALD D. ANTON

Respondents, each in their
Individual and Personal Capacity

PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

Walter J. Lawrence
Petitioner in pro per
#162
3101 SW 34th Ave. #905
Ocala, FL 34474
1-941-586-7024

October, 2005

Walter J. Lawrence respectfully petitions for a writ of certiorari to review the judgment of the Second Circuit Court of Appeals in this case.

QUESTIONS PRESENTED

1. Whether the Second Circuit's requirement that all § 1983 plaintiffs exhaust state administrative remedies conflicts with the repeatedly reaffirmed holding by this Court that exhaustion of administrative remedies in § 1983 cases may not be required.
2. Whether the Second Circuit's requirement that all § 1983 plaintiffs exhaust state administrative remedies is inconsistent with intent of Congress, especially the with enactment of a carefully tailored, limited exhaustion requirement in section 7 of the Civil Rights of Institutionalized Persons Act, P.L. 96-247, 42 U.S.C. § 1997e.
3. Whether the Second Circuit erred in requiring plaintiff in a § 1983 action seeking injunctive relief or damages to exhaust state administrative remedies where the defendant failed to

demonstrate that such remedies would be plain, speedy, and effective, and where and where the in an Article 78 proceeding under § 1983 the administrative process is not empowered to grant damages sought by plaintiff.

LIST OF ALL PARTIES

This is to certify that the following entities are the parties and interested persons in this case:

Anton, Ronald D. Corporation Counsel for the City of Niagara Falls.

Antonucci, Carol Defendant/Appellee in her individual and personal capacity

Foschio, Leslie G., U.S. District Court Magistrate

Lawrence, Walter J. , Petitioner in pro per

Rotella, Richard J. Assistant Corporation Counsel for the City of Niagara Falls.

Skretny, William M., U.S. District Court Judge
Western District of New York

TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED.....	ii-iii
LIST OF ALL PARTIES-----	iii
TABLE OF CONTENTS-----	iv-v
TABLE OF AUTHORITIES-----	vi-xi
OPINIONS BELOW-----	1
JURISDICTION.....	1
STATUTES INVOLVED-----	1
STATEMENT OF THE CASE-----	2
FACTS-----	2
REASONS FOR GRANTING THE WRIT-----	3
1. THE DECISION BELOW CONFLICTS WITH NUMEROUS DECISIONS OF THIS COURT , COURTS OF APPEALS AND STATE COURTS.....	3
A. Official Capacity v. Personal Capacity-----	10

B. Primary v. Incidental Relief

Under CPLR 7806-----13

C. Due Process-----19

II. THE DECISION BELOW IS INCONSISTENT
WITH THE EXPRESSIONS OF
CONGRESSIONAL INTENT.....22III. THE SECOND CIRCUIT ORDER IS
INCONSISTENT WITH THIS COURT'S
RULINGS IN HECK V. HUMPHREY, 512 U.S.
477 (1994); FELDER V. CASEY, 487 U.S. 131
(1988); PATSY V. BOARD OF REGENTS, 457
U.S. 496, 498 (1982); MCNEESE V. BOARD OF
EDUCATION, 373 U.S. 668 (1962) THAT, AT
THE LEAST, ADMINISTRATIVE
EXHAUSTION MAY NOT BE REQUIRED
UNLESS THE DEFENDANT
DEMONSTRATES THE ADEQUACY OF
ADMINISTRATIVE REMEDIES, AND THAT
ADMINISTRATIVE REMEDIES ARE
INADEQUATE WHERE THE OFFICIALS AT
THE END OF THE ADMINISTRATIVE
PROCESS ARE NOT EMPOWERED TO
GRANT DAMAGES IN THIS § 1983
ACTION.-----25

CONCLUSION.....30

TABLE OF CONTENTS FOR THE APPENDIX-----A-1

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Alacare, Inc.-North v. Baggiano</u> , 785 F.2d 963, (CA11, 1986)--	9
<u>Alyeska Pipeline Service Co v. Wilderness Society</u> ,	
421 U.S. at 260-271-----	23
<u>Arizonans For Official English v. Arizonans</u> ,	
520 U.S. 43 (1997)-----	11
<u>Broadcasting Services Organization</u> , 337 U.S. 901 (1949)-----	
<u>Burgos v. Hopkins</u> , 14 F.2d 787 (CA, N.Y. 1994)-----	18
<u>Capeda v. Coughlin</u> , 785 F. Supp. 385 (S.D.N.Y. 1992)-----	16
<u>City of Columbus v. Leonard</u> , 443 U.S. 905 (1979)-----	7
<u>Davis v. Halpern</u> , 813 F.2d 37 (CA2, 1987)-----	16
<u>Davidson v. Capuano</u> , 792 F.2d 275, (CA2, 1986)-----	16, 17, 21
<u>Desario v. Thomas</u> , 139 F.3d 80 (CA2, 1998)-----	27
<u>Doe v. Pfrommer</u> , 148 F.3d 73, (CA2, 1998)-----	4
<u>Felder v. Casey</u> , 487 U.S. 131 (1988)-----	5, 9
<u>Federal Communications Commission v.</u>	
<u>Broadcasting Services Organization</u> ,	
337 U.S. 901 (1949)-----	6-7
<u>Gade v. National Solid Waste Management Association</u> ,	

505 U.S. 88 (1992) -----	9
<u>Giano v. Flood</u> , 803 F.2d 769 (CA2, 1986)-----	16
<u>Gutierrez v. Coughlin</u> , 841 F.2d 484 (CA2, 1988)-----	16
<u>Heck v. Humphrey</u> , 512 U.S. 477 (1994)-----	4, 25
<u>Hafer v. Melo</u> , 502 U.S. 21, 116 L.Ed.2d 301, 112 S.Ct. 358 (1991) -----	10, 12
<u>Heck v. Humphrey</u> , 512 U.S.477 (1994)-----	4
<u>Hellenic Am. Neighborhood Action Comm v.</u> <u>City of New York</u> , 101 F.ed 877, (CA2, 1986)-----	19, 20
<u>Howlett v. Rose</u> , 496 U.S. 356 (1990)-----	9
<u>Hudson v Palmer</u> , 468 U.S. at 531, 533-----	19, 20
<u>Jenkins v. Haubert</u> , 179 F3d 19, 1999 WL 331871 (CA2, 1999) -----	8
<u>Keane v. New York School</u> , 186 A.D.2d 453, 589 N.Y.S.2d 18, 19 (1 st Dep't 1992)-----	13
<u>Kentucky v. Graham</u> , 473 U.S. 159, 165-66, 87 L.Ed.2d 114. 105 S.Ct. 3099 (1985)-----	11
<u>Kirschner v. Klemons</u> , 225 F.3d 227 (CA2, 2000)-----	12, 13
<u>Lawless v. City of Buffalo</u> , 578 N.Y.S.2d 27 (A.D. 4 Dept. 1991)-----	8
<u>Lawrence v. Goord</u> , 238 F.3d 182 (CA2, 2000)-----	8

<u>Luks v. Ascher</u> , 299 A.D.2d 262, 2002 N.Y.App.Div. LEXIS 11254-----	13
<u>Matter of Gross v. Perales</u> , 72 N.Y.2d 236, 527 N.E. 2d 1205, 532 N.Y.S. 2d 68 (1988)-----	19
<u>Matter of Schwab v. Bowen</u> , 41 N.Y.2d 907, 394 N.Y.S.2d 616, 363 N.E.2d 341-----	13
<u>McNeese v. Board of Education</u> , 373 U.S. 668 (1962)-----	4, 26
<u>Meiselman v. Richardson</u> , 743 F. Supp 143, (E.D.N.Y 1990)---	6
<u>Milwaukee v. Illinois</u> , 451 U.S. 304 (1981)-----	23
<u>Mitchell v. Fishbein</u> , 377 F.3d 157 (CA2, 2004)-----	13
<u>Mitchum v. Foster</u> , 407 U.S. 225, (1972)-----	25
<u>Monell v. Department of Social Services</u> , 436 U.S. 658 (1978)-----	7
<u>Monroe v. Pape</u> , 365 U.S., at 173-----	25
<u>Natale v. Koehler</u> , No. 89 cov. 6566, slip op., 1991 WL 130192 (S.D.N.Y. July 9, 1991)-----	16
<u>National Railroad Passengers Corp v. National Associations of Railroad Passengers</u> , 414 U.S 453 (1974)-----	23
<u>Northwest Airlines v. Transport Workers Union</u> , 451 U.S. 77 (1981)-----	22, 23

Nussle v. Willette, 224 F.3d 95 (CA2, 1999)-----8, 23, 24

Odrich v. Trustees of Columbia Univ.

Slip Op 51587 (Sup. Ct. New York County 2005)-----18

Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343,

712 N.E.2d 647, 690 N.Y.S.2d 478, 481-82 (1999)-13, 14,

15, 17

Parratt v. Taylor, 451 U.S. at 541-----20

Patsy v. Board of Regents, 457 U.S. 496, 498 (1982) -----4

Porter v. Nussle, 534 U.S. 516 (2002)-----8, 22, 24

Rattern v. Planning Comm'n of Pleasantville,

156 A.D2d 521, 525, 548 N.Y.S.2d 943,

947 [2d Dep't 1989] -----8

Rodriquez de Quijas v. Shearson/American Express, Inc.,

490 U.S. 477, 109 S.Ct. 1917,

104 L.Ed.2d 526 (1989)-----6

Securities and Exchange Commission v. Otis & Co.,

338 U.S. 843 (1949)-----7

Vermont Yankee Nuclear Power Corp v.

Natural Resources Defense Council,

435 U.S. 519, (1978)-----23

White v. State of New York 161 Misc.2d 938,

615 N.Y.S.2d 811-----13

Will v. Michigan Dept. Of State Police, 491 U.S. at 71-----11

Wilson v. Garcia, 471 U.S. 261 (1985)-----25

Zinerman v. Burch, 494 U.S. at 132-----20

Constitution and Statutes

42 U.S.C. § 1983----- passim

42 U.S.C. § 1997e(a)----- 2

New York Municipal Law

§§ 50-e(a) and 50-I-----passim

28 U.S.C. § 1254(1)----- 1

New York Public Officers Law Article 6, Section 84 86,

Article 86(2), Article 87-----passim

CPLR 7806-----passim

CITATIONS OF THE OFFICIAL AND UNOFFICIAL

REPORTS OF THE OPINIONS AND ORDERS

ENTERED IN THE CASE BY COURTS. RULE 14(1)(d)

The summary order and judgment of the of the District Court dismissing the complaint for failure to exhaust State of New York administrative remedies dated March 16, 2005 WL 643457, (App. at pages A-1 to A-27) (W.D.N.Y., March 16, 2005)

The Summary Order and Judgment of the Second Circuit Court of Appeals, entered on September 27, 2005, 2005 WL 2365337 (CA2, 2005), (App. A at pages A-21 to A-27) is not reported pursuant to the Judgment Mandate of the Court entered on September 27, 2005 .

OPINIONS BELOW

The Summary Order and Judgment of the Second Circuit Court of Appeals, entered on September 27, 2005, 2005 WL 2365337 (CA2, 2005), (App. A at pages A-21 to A-27) is not reported pursuant to the Judgment Mandate of the Court entered on September 27, 2005. The summary order and judgment of the of the District Court dismissing the complaint for failure to exhaust State of New York administrative remedies dated March 16, 2005 WL 643457, (App. at pages A-1 to A-27) (W.D.N.Y., March 16, 2005).

JURISDICTION

The Judgment Mandate of the Second Circuit Court of Appeals (App. Pages a-21 to A-27) was entered on September 27, 2005. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1).

STATUTES INVOLVED

42 U.S.C. § 1983; New York Municipal Law §§ 50-e(a) and 50-I; New York CPLR 7806. Appendix A-27 to A-28.

STATEMENT OF THE CASE